

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

FRATER et al.

Atty. Ref.: 4398-323

Serial No. Divisional of U.S. Serial No. 10/322,578

Group: Unassigned

Filed: January 20, 2004

Examiner: Unassigned

For: MASK WITH GUSSET

* * * * *

January 20, 2004

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT

Listed on accompanying Form PTO-1449 is information that may be considered material to the examination of this application, in compliance with the duty of disclosure requirements of 37 C.F.R. §§ 1.56, 1.97 and 1.98.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist. The Examiner is specifically requested not to rely solely on the material submitted herewith. At least one of the boxes below applies to the present application:

1. ☒ This Information Disclosure Statement is being filed within three months of the U.S. filing date OR before the mailing date of a first Office Action on the merits. No statement under 37 C.F.R. § 1.97(e) or fee is required.

1. ☐ Contingent Request to Treat Under 37 C.F.R. § 1.97(c)

In the event a first Office Action has been mailed prior to filing of the present Information Disclosure Statement and the Office Action was mailed more than three months since the filing of the application (for regular applications not including CPAs or RCEs), the Office is requested to treat the present paper as a submission under 37 C.F.R. § 1.97(c) and

charge the undersigned's Deposit Account No. 14-1140 for the fee required by 37 C.F.R. § 1.17(p). The present paper is submitted in duplicate for this purpose.

2. ☐ Contingent Request to Treat Under 37 C.F.R. § 1.97(e)(1)

In the event a first Office Action has been mailed prior to the filing of the present Information Disclosure Statement, and the Office Action was mailed more than three months since the filing of the application (for regular applications not including CPAs or RCEs), the Office is requested to treat the present paper as a submission under 37 C.F.R. § 1.97(e)(1) in that the undersigned hereby states that each item of information contained in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1).

2. ☐ This Information Disclosure Statement is being filed more than three months after the U.S. filing date AND after the mailing date of the first Office Action on the merits, but before the mailing date of a Final Rejection or Notice of Allowance.

a. ☐ I hereby state that each item of information contained in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1). In the event a Notice of Allowance or a Final Rejection has been mailed prior to filing this Information Disclosure Statement, the Office is authorized to treat this as a submission under 37 C.F.R. 1.97(d) and charge the undersigned's Deposit Account No. 14-1140 for the fee required by 37 C.F.R. § 1.17(p). The present paper is submitted in duplicate for this purpose.

b. ☐ I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making

reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2).

- c. ☐ Attached is our check in the amount of \$____ in payment of the fee under 37 C.F.R. § 1.17(p).

3. ☐ This Information Disclosure Statement is being filed more than three months after the U.S. filing date and after the mailing date of a Final Rejection or Notice of Allowance, but before payment of the Issue Fee. It is hereby requested that the Information Disclosure Statement be considered. Attached is our check in the amount of \$____ in payment of the fee under 37 C.F.R. § 1.17(i).

- a. ☐ I hereby state that each item of information contained in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1).

- b. ☐ I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2).

4. ☐ Relevance of the non-English language document(s) is discussed in the present specification.

5. ☐ The document(s) was/were cited in a corresponding foreign application. An English language version of the foreign search report or official action is attached for the Examiner's information. See MPEP § 609.

6. ☐ A concise explanation of the relevance of the non-English language document(s) appears below:

7. ☒ Copies of the documents were cited by or submitted to the Office in Application No. 10/322,578, filed December 19, 2002, and Application No. 09/885,445, filed June 21, 2001 which are relied upon for an earlier filing date under 35 U.S.C. § 120. Thus, copies of these documents are not attached. 37 C.F.R. § 1.98(d).

8. ☐ The publication date of at least one of the listed documents does not provide a month of publication. However, the year of publication of each listed document is sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the month of publication is not in issue. Each publication date is listed on the attached PTO-1449 based on information presently available to the undersigned. However, each listed publication date should not be construed as an admission that the information was actually published on the date indicated.

It is respectfully requested that the Examiner initial and return a copy of the enclosed PTO-1449, and to indicate in the official file wrapper of this patent application that the documents have been considered.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 14-1140 referencing docket number 4398-323.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



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**INFORMATION DISCLOSURE
CITATION**

ATTY. DOCKET NO.

4398-323

SERIAL NO.

Divisional of U.S. Serial No.
10/322,578

APPLICANT

FRATER et al.

(Use several sheets if necessary)

FILING DATE

January 20, 2004

GROUP

Unassigned

U.S. PATENT DOCUMENTS

*EXAMINER INITIAL	DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	1,710,160	04/1929	Name Not Available			
	2,625,155	01/1953	Name Not Available			
	5,074,297	12/1991	Venegas			
	5,349,949	09/1994	Schegerin			
	5,540,223	07/1996	Starr et al.			
	5,542,128	08/1996	Lomas			
	5,647,357	07/1997	Barnett et al.			
	5,649,532	07/1997	Griffiths			
	5,657,752	08/1997	Landis et al.			
	5,662,101	09/1997	Ogden et al.			
	5,921,239	07/1999	McCall et al.			
	5,937,851	08/1999	Serowski et al.			
	6,192,886	02/2001	Rudolph			
	6,340,024	01/2002	Brookman et al.			
	6,357,441	03/2002	Kwok et al.			
	6,371,110	04/2002	Peterson et al.			
	6,412,488	07/2002	Barnett et al.			
	6,467,483	10/2002	Kopacko et al.			

FOREIGN PATENT DOCUMENTS

DOCUMENT	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION YES NO

OTHER DOCUMENTS (including Author, Title, Date, Pertinent pages, etc.)

	Laurent Brochard, "PRESSURE SUPPORT VENTILATION," Chapter 9, Part IV – Conventional Methods of Ventilator Support, pgs. 239-257, 1994.
	McPherson et al., "RESPIRATORY THERAPY EQUIPMENT," Chapter 8, Third Edition, Introduction to Ventilators, pgs. 230-253, 1985.

*Examiner

Date Considered

Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to application.

**INFORMATION DISCLOSURE
CITATION**

(Use several sheets if necessary)

Atty. Docket No.

4398-323

Serial N .

Divisional of USSN 10/322,578

Applicant

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U.S. PATENT DOCUMENTS

U.S. PATENT DOCUMENTS							FILING DATE
EXAMINER INITIAL	DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	IF APPROPRIATE	
	US-2003/0075180	04/2003	RAJE et al.				
	5,243,971	09/1993	SULLIVAN et al.				
	5,080,092	01/1992	TENNA				
	3,545,436	12/1970	HOLLOWAY				
	6,425,395	07/2002	BREWER et al.				
	4,402,316	09/1983	GADBERRY				
	4,641,645	02/1987	TAYEBI				
	4,905,683	03/1990	CRONJAEGER				
	4,914,957	04/1990	DOUGHERTY				
	5,299,448	04/1994	MARYYANEK				
	5,355,878	10/1994	GRIFFITHS et al.				
	5,503,147	04/1996	BERTHEAU				
	5,937,445	08/1999	RAVO et al.				
	6,019,101	02/2000	COTNER et al.				
	6,213,125	04/2001	REESE et al.				
	6,328,031	12/2001	TISCHER et al.				
	6,345,618	02/2002	HAYEK				
	5,492,116	02/1996	SCARBERRY et al.				
	6,112,746	09/2000	KWOK et al.				

FOREIGN PATENT DOCUMENTS

[illegible]

OTHER DOCUMENTS (including Author, Title, Date, Pertinent pages, etc.)

[illegible]

*Examiner

Date Considered

Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to application.

Atty. Dkt. No.		Client Ref.	
4398-323			

**INFORMATION DISCLOSURE STATEMENT
BY APPLICANT**

Applicant: Frater et al.

Appl. No.: Divisional of USSN 10/322,578

Filing Date: January 20, 2004

Date: January 20, 2004 Page 3 of 3

Examiner: Unassigned Group Art Unit: Unassigned

U.S. PATENT DOCUMENTS

Examiner's Initials*	Document Number	Date MM/YYYY	Name (Family Name of First Inventor)	Class	Sub Class	Filing Date (if appropriate)
	AR 2,130,555	09/1938	Malcom			
	BR 2,133,699	10/1938	Heidbrink			
	CR 2,428,451	10/1947	Emerson			
	DR 2,706,983	04/1955	Matheson et al.			
	ER 4,069,516	01/1978	Watkins, Jr.			
	FR 4,907,584	03/1990	McGinnis			
	GR 4,971,051	11/1990	Toffolon			
	HR 5,074,297	12/1991	Venegas			
	IR 5,349,949	09/1994	Schegerin			
	JR 5,649,532	07/1997	Griffiths			
	KR 5,655,527	08/1997	Scarberry et al.			
	LR 5,662,101	09/1997	Ogden et al.			
	MR 5,921,239	07/1999	McCall et al.			
	NR 6,016,804	01/2000	Gleason et al.			
	OR					
	PR					

FOREIGN PATENT DOCUMENTS

	Document Number	Date MM/YYYY	Country	Inventor Name	English Abstract		Translation Readily Available	
					Enclosed	No	Enclose	No
	QR 0303090 B1	02/1989	EPO					
	RR 0334555 A2	09/1989	EPO					
	SR 196 03 949 A1	08/1997	Germany		x			
	TR 0 747 078 A2	12/1996	EPO				x	
	UR WO 98/04310	02/1998	PCT				x	
	VR 0853962 A2	07/1998	EPO					
	WR 11-397	01/1999	Japan					
	XR WO 01/62326	08/2001	PCT		x			
	YR							
	ZR							

OTHER: (Including in this order: Author, Title, Periodical Name, Date, Pertinent Pages, etc.)

AAR				
BBR				

Examiner

Date Considered:

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